

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DAVID M. LUCAS and ERIC L.
SALERNO,

Plaintiffs,

vs.

JOS. A. BANK CLOTHIERS, INC.,

Defendant.

CASE NO. 14-cv-1631-LAB (JLB)

ORDER:

**1) GRANTING LEAVE TO FILE
AMENDED COMPLAINT, and**

[Docket no. 9]

**2) DENYING DEFENDANT'S
MOTION TO DISMISS AS MOOT**

[Docket no. 8]

On July 9, 2014, Plaintiffs filed a putative class action complaint against Defendant Jos. A. Bank Clothiers, Inc. asserting three claims under the California's Unfair Competition Law (UCL), Cal. Bus. & Prof. Code §§ 17200 et seq., and one claim under California's Consumers Legal Remedies Act (CLRA), Cal. Civil Code §§ 1750 et seq. (Docket no. 1.) Defendant moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. (Docket no. 8.) On October 9, 2014, the parties filed a joint motion to allow Plaintiffs leave to amend their complaint. (Docket no. 9.)

Under Federal Rule of Civil Procedure 15, "a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). The "court should freely give leave when justice so requires." *Id.* Granting leave to amend rests

1 in the sound discretion of the trial court. *Int'l Ass'n of Machinists & Aerospace Workers v.*
2 *Republic Airlines*, 761 F.2d 1386, 1390 (9th Cir. 1985). This discretion must be guided by
3 the strong federal policy favoring the disposition of cases on the merits and permitting
4 amendments with “extreme liberality.” *DCD Programs Ltd. v. Leighton*, 833 F.2d 183, 186
5 (9th Cir. 1987). “Five factors are taken into account to assess the propriety of a motion for
6 leave to amend: bad faith, undue delay, prejudice to the opposing party, futility of
7 amendment, and whether the plaintiff has previously amended the complaint.” *Johnson v.*
8 *Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004).

9 This is Plaintiffs' first motion to amend and it is not driven by bad faith or with the
10 intent to cause undue delay or prejudice to the Defendant. Defendant joins Plaintiffs' motion
11 and does not dispute the absence of delay or prejudice. (See Docket no. 9.) Accordingly,
12 the Court **GRANTS** the parties' joint motion for leave to amend. See *Johnson*, 356 F.3d at
13 1077. Plaintiffs may file a First Amended Complaint on or before **October 22, 2014**.
14 Plaintiffs should file it as a separate entry in the case docket, rather than leave it as an
15 attachment to the joint motion.

16 Plaintiffs' changes to their complaint address at least some of the grounds for
17 dismissal in Defendant's motion to dismiss, particularly with regard to damages and prayer
18 for relief. (*Compare* Docket no. 1 *with* Docket no. 9-1.) “[I]t is well-established that an
19 amended [pleading] supersedes the original, the latter being treated thereafter as
20 non-existent.” *Valadez-Lopez v. Chertoff*, 656 F.3d 851, 857 (9th Cir. 2011) (internal
21 quotation marks omitted). Accordingly, the Court **DENIES** Defendant’s motion to dismiss as
22 moot. Defendants shall have **21 days** from the date Plaintiffs file their First Amended
23 Complaint to answer or otherwise respond.

24

IT IS SO ORDERED.

26 || DATED: October 15, 2014

27

Larry A. Bunn

HONORABLE LARRY ALAN BURNS
United States District Judge